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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 633

WILLIAM & LUX INCORPORATED, *Petitioner*,

v.

R. H. ANDERSON, ET AL., *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

(*See list of attorneys on next page*)

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

CLAYTON L. OEN
Marathon Oil Bldg.
Findlay, Ohio

JAMES D. ADAMS
ARTHUR R. ALBRECHT
International Building
San Francisco 6, California

Attorneys for Respondent Marathon Oil Company

MARTIN J. WEIL
SIMS HAMILTON
ADOLPH H. LEVY
612 South Flower Street
Los Angeles 17, California

Attorneys for Respondents Mobil Oil Company, Inc., Continental Oil Company, Seaboard Oil Company, Western States Gasoline Corp., Kettleman North Dome Ass'n., C. R. Gallagher

LLOYD M. TWEEDT
1000 Merchants Exchange Building
San Francisco 4, California

Attorney for Respondents R. H. Anderson and R. H. Anderson, Inc.

MARCUS MATTSON
Standard Oil Building
Los Angeles 15, California

Attorney for Respondent Standard Oil Company of California

HAROLD C. MORTON
1126 Pacific Mutual Building
Los Angeles 14, California

Attorney for Respondent The Superior Oil Company

MARION B. PLANT
111 Sutter Street
San Francisco 4, California

Attorney for Respondents Union Oil Company of California and Independent Oil Producers Agency

HERBERT W. CLARK
GIRVAN PECK
Crocker Building
San Francisco 4, California

Attorneys for Respondents Honolulu Oil Corporation, Crocker-Citizens National Bank as Trustee under the Will of James E. Fickett, Loretta Fickett Codington, Carol Codington, Alice June Fickett Lindsay, James Lindsay and Jennifer Lindsay

EDWARD G. CHANDLER
593 Market Street
San Francisco 5, California

Attorney for Respondent Elmer B. Stone

EDWIN S. PILLSBURY
DAVID C. DUNLAP
155 Montgomery Street
San Francisco 4, California

Attorney for Respondent Elmer C. Bolton

JAMES PETRINI
1712 Nineteenth Street
Post Office Box 528
Bakersfield, California

Attorney for Respondent A. J. West

RICHARD H. PETERSON
245 Market Street
San Francisco 6, California

Attorney for Respondent Natural Gas Corporation of California

PAUL F. SCHLICHER
135 East 42nd Street
New York 17, New York

R. K. BARROWS
BUFORD W. MAX
3350 Wilshire Boulevard
Los Angeles 5, California

Attorneys for Respondent Texaco Inc.

WALTER M. GLEASON
333 Montgomery Street
San Francisco, California

ROBERT R. BOSSON
217 West Seventh Street
Hanford, California

Attorneys for Respondents William F. Colm and Marion V. Rice

RONALD B. LABOWE
Law Center Building
1229 West First Street
Los Angeles 26, California

Attorney for Respondents Gladys Z. Zimmerman and Charles F. Nielson as Executors of the Estate of F. C. Noel, deceased

JOSEPH M. McLAUGHLIN
1224 Bank of America Building
650 South Spring Street
Los Angeles 14, California

Attorney for Respondent Lon V. Smith, individually, and Lon V. Smith as Executor for Jane Smith, deceased

JOSEPH C. KIMBLE
904 Guarantee Savings Building
Fresno 21, California

Attorney for Respondent Frank Jeppi

PATRICK JAMES KIRBY
ROBERT A. SMITH
690 East Green Street
Pasadena, California

Attorneys for Respondent Sunray D. Oil Company

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OPINIONS BELOW

The opinions of the District Court and the Court of Appeals are copied in the appendix to the petition for certiorari (Appdx. Pet.). The first opinion (Carter, J.) is not the opinion on which the District Court (Wollenberg, J.) entered the judgment appealed from, and petitioner is incorrect in saying (p. 2) that Judge Wollenberg reversed Judge Carter. The first opinion (Carter, J.) related to the first amended complaint, but that complaint was superseded by the second amended complaint which contained different allegations and raised different questions.

The opinion of the Court of Appeals shows that two appeals by petitioner were disposed of in a single

opinion, each appeal involving the same transactions, the same issues, and the same appellant, but different groups of appellees. Petitioner seeks certiorari only in this, the *Anderson* case, having abandoned its petition for certiorari in the *Chickering* case after the record was filed in this Court.

QUESTIONS PRESENTED

1. Did the Court of Appeals actually hold what petitioner argues it held on indispensable parties? *Infra* pp. 7-9.

2. If it did and in so doing erred, should certiorari be granted where the Courts below correctly ordered the action dismissed on two independent and alternate grounds, neither of which is challenged or presented in the petition as a question for review? *Infra* p. 9.

3. Must this Court decide, under the single question presented, whether some expression in the opinion of the Court of Appeals prevented petitioner from seeking leave to substitute other parties for it as plaintiffs, where petitioner not only did not seek such leave in either Court below to substitute such parties, but actually opposed all efforts to bring them into this action on the ground that their joinder would destroy diversity jurisdiction, and they were not indispensable parties anyway? *Infra* pp. 10-15.

ONLY STATE LAW INVOLVED

The decisions below were bottomed on California law. Contrary to petitioner's contentions, Rule 19, Federal Rules of Civil Procedure, was neither discussed, cited, nor involved in the opinion of the Court of Appeals.

STATEMENT

The grounds on which the Courts below based their judgments of dismissal are more fully and accurately stated in their opinions than in the petition for certiorari. Many of the statements of petitioner are designed to make it appear that its claim is highly meritorious, and that frauds of the worst kind were perpetrated on it during a quarter of a century. Suffice it to say that petitioner, by not presenting the question, admits it had no claim, and lets stand unchallenged the holdings of the Courts below that its pleadings showed that no fraud had been committed on it because they showed that all of those persons who constituted its "corporate being had knowledge and approved of the transaction complained of and such approval may be found on the company's books." (Appdx. Pet. p. 11a.)

This action was brought by petitioner, a corporation, to nullify 59 ancient deeds. The gravamen of the complaint was that some of its agents and employees had made and retained profits when they resold the lands conveyed in the 59 different deeds to them and to others. The profits, however, were alleged to have been made and retained by them with the knowledge and approval of all petitioner's stockholders, directors and officers. Its stockholders were the trustees of the Henry Miller Trust, who as trustees owned all of petitioner's stock. (R. 425-433, 38, 40-41, 88-90, 991, 595-605, 753-755, 455-458, R. vol. 4, pp. 17-20, 329-331.)

The District Court dismissed the action for failure to state a claim and to state a claim not barred by the statutes of limitations. In so doing it said: "Plaintiff's complaint shows that all those persons who constitute plaintiff's corporate being had knowledge and

approved of the transaction complained of and such approval may be found on the company's books. It is an elementary proposition of law that fraud requires complainant's lack of knowledge and that affirmance waives fraud. * * * Notice to all of the stockholders of a matter so intimately affecting their rights must be deemed notice to the corporation. What we have here, however, is more than mere notice to the corporation. We have plaintiff alleging in his complaint actual knowledge on the part of all the stockholders of the corporation who would be entitled to complain of the wrong. As unanimous consent renders fraud impossible, no wrong has been done to the plaintiff." (Appdx. Pet. 11a.)

Moreover, the Court would make no distinction between knowledge and consent of stockholders who are trustees and stockholders who are not trustees. It said: "Stockholders who are trustees of stock are nonetheless stockholders with all the powers and rights of stockholders. Their fiduciary obligations to their beneficiaries do not deprive them of their status as shareholders or make the beneficiaries shareholders in their place. They and they alone hold the legal title to stock and the right to vote it and exercise all other rights incident thereto. 'Shares standing in the name of any person as * * * trustee * * * may be voted and all rights incident thereto may be exercised only by the * * * trustee * * * in person or by proxy, and without proof of authority.' Cal. Corp. Code Sec. 2218." (Id. p. 12a.)

Petitioner necessarily recognizes the correctness of the holding of the District Court on these two points for it says it does not tender, as an independent ground supporting the exercise of this Court's cer-

tiorari jurisdiction, the holding on the points. (Pet. pp. 13-14).

The District Court went on to hold that petitioner's claim must be dismissed for another reason, giving as the reason that if petitioner ever had a claim the claim was barred by the statutes of limitations of California before this action was brought (id. p. 13a). Again, petitioner nowhere in its petition contends the Courts below erred in holding its claim was barred.

Petitioner at times contended in the Courts below that the action of its stockholders in consenting to and approving the transactions was not binding on it because its stockholders were trustees who had breached their fiduciary duties to the beneficiaries of the Henry Miller Trust when they consented to and approved the transactions. At other times, it denied that it had "ever suggested that it was the breach of the Henry Miller Trust which was in question."[1] The District Court finally disposed of the petitioner's conflicting positions by holding as a further and additional ground for dismissing the complaint that even if petitioner had a claim which arose out of the trustees' breaching a fiduciary duty to the beneficiaries of the Henry Miller Trust when they consented to and approved the corporate transactions, nevertheless the trustees and beneficiaries of the Trust would be indis-

[1] In petitioner's Opening Brief in the Court of Appeals it said at pp. 60-61: "Nowhere in the complaint nor in oral argument nor in written argument has appellant ever suggested that it was the breach of the Henry Miller Trust which was in question. This suggestion has come solely from the appellees who have at every opportunity attempted to contort appellant's position. This is a *corporate* action, brought by the *corporation* for the breach by its fiduciaries of their duty to the corporation. The defendants may also be guilty of wrongs to others but that is completely irrelevant."

Conclusion.

Petitioner does not really challenge the propriety of either the District Court or the Court of Appeals' decision that petitioner is not a wronged party and has no standing to assert the claims it has attempted to assert. Instead it seeks to invoke this Court's power of supervision to correct alleged departure from the usual course of judicial proceedings. Petitioner seeks to do this as protector of alleged rights of the trustees and beneficiaries of the Henry Miller Trust to be substituted as plaintiffs despite the fact they have made no effort on their own part at any stage of the proceedings to assert any such rights. Judgments of the Court of Appeals and of the District Court should not be disturbed because of their failure to act upon contentions not presented to them or to afford remedies which they had no power to give without application having been made therefor by such parties. The petition should be denied.

Respectfully submitted.

RODNEY K. POTTER,

Attorney for Appellees, Lloyd Corporation, Ltd., Richfield Oil Corporation, Signal Oil & Gas Company, Moriqui Exploration Company, Intex Oil Company, Getty Oil Company and Rodney K. Potter and Elizabeth F. Potter as Executors of the Estate of E. K. Potter, Deceased.